APPENDIX

AMENDMENT VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

UNITED STATES COURT OF APPEALS

For the Sixth Circuit

Nos. 14881-14882

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*

v.

EUGENE DONALD METZ and KENNETH EUGENE MILLER, *Defendants-Appellants.*

Appeal from the United States District Court for the Eastern District of Kentucky, at Covington.

(Decided January 22, 1963)

Before: Cecil, Chief Judge, O'Sullivan, Circuit Judge, William E. Miller, District Judge.

Per Curiam. The appellants, Eugene Donald Metz and Kenneth Eugene Miller, were tried in the United States District Court for the Eastern District of Kentucky on the first count of an indictment charging them with conspiracy to violate Section 2421, Title 18, U.S.C., by knowingly transporting Mae Deloris Garland from the Eastern District of Kentucky to Chicago, Illinois, for the purpose of prostitution and debauchery.

Metz was charged, in count two of the indictment, with the substantive offense of transporting the girl, in interstate commerce, from Newport, Kentucky, to Chicago, Illinois, for prostitution, debauchery and other immoral purposes.

The case was tried to a jury and a verdict of guilty was returned against both appellants on count one, and against Metz on count two. Neither of the appellants testified on his own behalf, nor were any witnesses offered in their defense. The appellants were each sentenced to five years imprisonment on count one and Metz was sentenced to five years on the second count, to run concurrently with his sentence on the first count.

The appeals were submitted to this Court on the record of the trial in the District Court and the oral arguments and briefs of counsel.

The assignments of error on behalf of both appellants are failure of the government to establish a prima facie case on the charge of conspiracy; failure to prove venue in the Eastern District of Kentucky, and improper use, for cross-examination, of a statement given by Mae Deloris Garland to an F. B. I. agent.

It is further claimed that there was a failure to identify the defendant Kenneth Eugene Miller as the person who committed the offense charged. And it is claimed on behalf of Metz that the Court erred in failing to give an instruction to the jury requested by counsel on the question of intent and motivation in connection with the transportation.

From an examination of the transcript of all the evidence taken at the trial, we conclude that the government established a prima facie case on the questions of conspiracy and venue. There is evidence, direct and circumstantial, from which the jury could draw logical inferences that the appellant Metz entered into a conspiracy with one Blackie to commit the offense charged in count one of the indictment. In the absence of any evidence to the contrary, the jury was entitled to believe the evidence offered by the government and to draw logical inferences therefrom.

The instructions of the trial judge, with reference to the offenses charged, the essential elements thereof and

the relation of each defendant to the crimes charged in the indictment, are adequate and proper. We find no prejudicial error to either defendant in the manner in which the statement of Mae Deloris Garland to the F. B. I. agent was used. No substantial rights were affected. Rule 52, Rules of Criminal Procedure.

The co-conspirator of Metz is referred to throughout the testimony of Garland, the prosecuting witness, as Blackie. Trial Counsel for the government also refers to him as Blackie. Metz testified that he knew a Blackie Miller in Chicago and that he always saw him when he went to Chicago. Nowhere in the record do we find any connection between Blackie or Blackie Miller and the Kenneth Eugene Miller, who stood trial in this case. For this reason, the judgment of conviction of the appellant, Kenneth Eugene Miller, is reversed and his case remanded to the District Court for further proceeding in conformity with this opinion.

The judgment of conviction of the appellant, Eugene Donald Metz, is affirmed.

ORDER—Filed April 30, 1963.

This cause is before the Court on petition of the defendant-appellant, Eugene Donald Metz, for a rehearing *en banc*.

The principal question involved in this appeal is whether there was sufficient evidence introduced by the government to establish a prima facie case on all of the issues presented by count one of the indictment against the appellant Metz. The sufficiency of the evidence was not challenged on count two of the indictment. The challenge to this count was the failure of the trial judge to give an instruction requested by counsel for Metz.

The Court found on a review of the whole record that the evidence offered and the logical inferences which the jury might draw therefrom were sufficient to make a prima facie case on the questions of conspiracy and venue. This was a factual issue. No inferences were drawn by this Court from the fact that the defendant offered no evidence in support of his claims and that he did not himself testify on his own behalf. This fact was alluded to in paragraph three of the opinion along with other statements showing the nature and history of the trial.

The substance of written request No. 7, tendered by counsel for Metz, which the trial judge refused to give, was adequately covered in the general charge. Appellants' App. 71a-73a. A trial judge is not required to give a requested charge in the language in which it is presented, if the subject is correctly covered in substance in the general charge. Rule 30 F.R. Cr. P. *Davis* v. *United States*, 226 F. 2d 331, 336, C.A. 6; cert. denied 350 U. S. 965; *Henderson* v. *United States*, 218 F. 2d 14, 18, C.A. 6; cert. denied 349 U. S. 920; 4 Federal Practice and Procedure (Barron), Sec. 2234 p. 246 (1951).

Counsel for appellant Metz states in the petition for rehearing "There is no such statement". This is directed at the opinion wherein reference is made to a statement given by Mae Deboris Garland to an F. B. I. agent. Miss Garland says she gave F. B. I. agent Barry a statement (p. 17 tr.). Mr. Howell requested a copy of it (p. 18 tr.). The Court ordered it given to defense counsel (p. 21 tr.). It is evident that counsel had the statement after Miss Garland finished testifying (p. 57 tr.).

We find no questions presented by the petition for rehearing not already decided by the Court in its opinion of January 22, 1963. The decision of the Court on this appeal is based solely on the facts pertinent to this particular case.

No principle of law is established herein to serve as precedent for future action of the Court.

It is ordered that the petition for rehearing *en banc* and the petition for rehearing be and the same are hereby denied.

(s) Lester L. Cecil, Chief Judge.